

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID PERRYMAN,)
Plaintiff,)
vs.)
ARNOLD SCHWARZENEGGER, et al,)
Defendants.)

)

No. C 06-4197 JSW (PR)
ORDER OF DISMISSAL
(Docket No. 3)

Plaintiff, currently incarcerated at the San Francisco County Jail, has filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging that an investigator on his criminal case defrauded the courts regarding funding on his criminal case. He has also filed a motion to proceed *in forma pauperis*, which is now GRANTED in a separate order filed simultaneously (docket no. 3).

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d

1 696, 699 (9th Cir. 1990).

2 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
 3 elements: (1) that a violation of a right secured by the Constitution or laws of the
 4 United States was violated, and (2) that the alleged deprivation was committed by a
 5 person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

6 **B. Legal Claim**

7 In this case, Plaintiff has sued a criminal case investigator, a private individual.
 8 A private individual generally does not act under color of state law. *See Gomez v.*
 9 *Toledo*, 446 U.S. 635, 640 (1980). Purely private conduct, no matter how wrongful, is
 10 not covered under § 1983. *See Ouzts v. Maryland Nat'l Ins. Co.*, 505 F.2d 547, 559
 11 (9th Cir. 1974). Simply put: there is no right to be free from the infliction of
 12 constitutional deprivations by private individuals. *See Van Ort v. Estate of Stanewich*,
 13 92 F.3d 831, 835 (9th Cir. 1996).

14 Attorneys in private practice are not state actors. *See Simmons v. Sacramento*
 15 *County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003); *see also Kimes v. Stone*,
 16 84 F.3d 1121, 1126 (9th Cir. 1996) (attorneys are private actors). Services performed
 17 by a private attorney in connection with a lawsuit do not constitute action under color
 18 of state law. *See Franklin v. Oregon*, 662 F.2d 1337, 1345 (9th Cir. 1981); *Briley v.*
 19 *California*, 564 F.2d 849, 855-56 (9th Cir. 1977). The same reasoning applies to
 20 claims regarding investigators used by private attorneys. As a result, these claims do
 21 not come within the jurisdiction of the federal courts. *See Franklin*, 662 F.2d at 1345.
 22 Therefore, Plaintiff's claims are DISMISSED.

23 Plaintiff has also named numerous other individuals, including the Governor,
 24 Attorney General, Superior Court, Bar Association and a private attorney. Plaintiff
 25 does not identify any factual allegations against these individuals. Instead, his
 26 complaint states that he "never know[s] who to actual [sic] name so I name everyone
 27 hoping you will name proper defendants." Because the Court cannot discern any basis

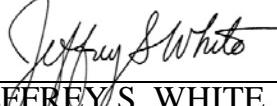
1 for liability against any of these other individuals based on the allegations in the
2 complaint, they are DISMISSED from this action. As such, Plaintiff's complaint fails
3 to state a claim under § 1983 against any of the named Defendants and must be
4 DISMISSED without prejudice to Plaintiff bringing his claims in a proper forum.

5 **CONCLUSION**

6 For the forgoing reasons, Plaintiff's complaint is hereby DISMISSED. The
7 Clerk shall close the file and enter judgment in this case.

8 IT IS SO ORDERED.

9 DATED: January 10, 2007


10 JEFFREY S. WHITE
11 United States District Judge

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